

STATEMENT SUMMARIZING INTERVIEW

This application has been carefully reviewed in light of the Office Action dated June 20, 2006. Claims 1 to 3, 5 to 10, and 12 to 17 are in the application, of which Claims 1, 15 and 16 are independent. Reconsideration and further examination are respectfully requested.

Applicant thanks Examiner Filipezyk and his Supervisor, Mr. Etienne Leroux, for the courtesies and thoughtful treatment afforded during a telephone interview conducted on October 31, 2006. A Statement summarizing the interview follows.

Initially, the general nature of the invention was explored, focusing on Figure 3 of the subject application which shows object 306, topography data such as elevational data 311 and 312, and reference entity 305. It was explained that elevational data 311 and 312 was obtained in relation to reference entity 305, which in this case is a two-dimensional x-y plane. The topography data is measured along topography direction 301, which may be a direction that points outward from a patient's body. With reference to Figure 5, which shows a data storage format according to one embodiment of the invention, there is a first section such as A504 which stores the topography data, a second section A502 which stores information concerning the reference entity (here, the location of reference entity 305 with respect to a global coordinate system), and a third section such as A503 which stores direction 301 along which the topography data is determined with respect to the reference entity.

In the Office Action, all claims were rejected under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. With respect to Figure 4, it was explained that the data storage format of the invention facilitates fusion and/or registration of different medical images with each other. Accordingly, in the context of the invention, the Examiner and Mr. Leroux agreed to withdraw the rejection of Claim 16, since Claim 16 very clearly specified the steps of "utilizing" the data, in the context of fusion of medical image topography data to other medical image data. An amendment was proposed to Claim 1, to specify that the data storage format was "stored on a computer-readable medium", thereby putting the claim in clear compliance with MPEP § 2106.01 (page 2100-18, Revision 5, August 2006):

"In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, **and is thus statutory**". (Emphasis added).

Despite the proposed amendment, the Examiner and Mr. Leroux maintained that the amendment would not be sufficient to avoid the rejection under § 101. In maintaining this position, both conceded that the invention has a practical application, namely, utility in the process of fusion or registration of medical image topography data with other medical image data, as clearly depicted in Figure 4 of the subject application. Accordingly, it was agreed that the § 101 rejection would be withdrawn if this practical utility were explicitly recited in the claim language of independent Claims 1 and 15.

It is Applicant's position that if an invention has a practical application, then it should not be subject to a rejection under § 101 even if the practical application is not

recited explicitly in the claim. PTO practice is replete with examples: a claim to a car is not subject to a rejection under § 101 simply because it does not recite its practical application of transportation. Nevertheless, Applicant has no objection to an amendment that explicitly recites the practical application herein, and such an amendment has now been made to both of Claims 1 and 15. Accordingly, withdrawal of the § 101 rejection is respectfully requested.

The Office Action further entered a rejection of all claims under § 112, first paragraph, for use of the terminology of "medical image" topography data. As a result of the interview, and in accordance with the explanation of the multiple examples of "medical image" topography data throughout the specification, both the Examiner and Mr. Leroux agreed to withdraw this rejection.

In connection with this agreement, it was also agreed to withdraw the rejection under § 112, second paragraph, for alleged indefiniteness over use of the term "medical image" topography data.


The Office Action further entered a rejection of all claims under 35 U.S.C. § 112, second paragraph, for use of the term "topography direction". This rejection has been repeated from prior Office Actions. It was agreed to amend the claims so as to specify that the topography direction is a direction along which the medical image topography data is measured or calculated "with respect to the reference entity", and that such an amendment would result in withdrawal of this § 112 rejection. This amendment has now been made to all claims.

The Office Action further entered a rejection of all claims under 35 U.S.C. § 102(b) over U.S. Patent 6,047,227 (Henderson). At the interview, Mr. Leroux agreed that it was inappropriate to enter a rejection of the claims under § 102, since Henderson was completely unrelated to medical image topography data. It was therefore agreed that the § 102(b) rejection over Henderson would be withdrawn.

In keeping with the agreements at the interview, it is believed that all rejections in the Office Action should be withdrawn. It is further believed that the claims herein recite subject matter that is patentable over the art of record, since none of the art relates to the data storage format claimed herein, particularly insofar as such data storage format is suitable for storing medical image topography data in a way that facilitates fusion of the medical image topography data to other medical image data.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. O'Neill", is written over a horizontal line.

Attorney for Applicant
Michael K. O'Neill
Registration No. 32,622

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200

CA_MAIN 123351v1